

COURTNEY E. MURPHY

From: Abrams, Michael [MAbrams@LathropGage.com]
Sent: Monday, September 24, 2007 9:57 AM
To: COURTNEY E. MURPHY
Subject: RE: Maxus v RSUI
Attachments: Abrams, Michael.vcf

We can not consent.

Michael J. Abrams
LATHROP & GAGE L.C.
2345 Grand Boulevard, Suite 2500
Kansas City, MO 64108
(816) 460-5530 Direct Dial
(816) 292-2001 Facsimile
mabrams@lathropgpage.com

WE ARE INCLUDING THE FOLLOWING SENTENCE TO COMPLY WITH TREASURY REGULATIONS. ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS OR ENCLOSURES) WAS NOT INTENDED OR WRITTEN BY THE AUTHOR TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER OR (2) PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR OTHER MATTER ADDRESSED HEREIN.

This e-mail (including any attachments) may contain material that (1) is confidential and for the sole use of the intended recipient, and (2) may be protected by the attorney-client privilege, attorney work product doctrine or other legal rules. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

-----Original Message-----

From: COURTNEY E. MURPHY [mailto:CMURPHY@clausen.com]
Sent: Friday, September 21, 2007 12:37 PM
To: Abrams, Michael
Cc: Beck, Douglas (SHB); DAVID A. GROUP
Subject: Maxus v RSUI
Importance: High

Dear Mike,

Pursuant to our discussion earlier this week, this will serve as a follow up on our good faith request to permit RSUI to designate Brian Jarvinen as an expert meteorologist in these proceedings. We attach his report which will be used and he is available for immediate deposition. You advised that you would take our request under advisement, but were inclined to deny our request to designate. As I mentioned, it may be prudent to proceed with the depositions under a full reservation of rights. Alternatively, we will file our motion.

I also advised you that the basis of our motion was the fact that RSUI relied upon the claim submission issued to us on May 31, 2006. Relying on Maxus' claim submission, RSUI believed that discrepancies in scope was the issue rather than the wind vs flood because Maxus did not include the first floor of the properties in their claim "arguably" due to flooding - as Stacey Andreas of your firm put it and as Chadwell captured it in his letter report. Based upon the claim Maxus submitted, in dispute was the discrepancies in scope calculated by our respective adjustment teams. It was only during McRoberts's deposition did we learn that while Chadwell was in fact directed by Maxus to not include the first floor damages arguably due to flooding, that McRoberts now contends that this was in error, that it should never have been done that way and that there was considerable "wind" damage to the first floor of the property. While we also recognize that McRoberts now contends the approach taken was a negotiation tactic of sorts, that testimony was a little incredible in that the direction given to Chadwell was given in October/November 2005 and Maxus never presented their claim to RSUI until May, 2006. As such, we learned on July 31, 2007 - post expert designation deadline - that the insured now contends that they did sustain wind damage to the first floors, that their own claim preparation was incorrectly performed and that the claim as submitted (which was never amended or modified) was also erroneous.

For these reasons, we will be requesting the Court to permit our expert designation.

If we do not hear back from you today, we will presume that you do not consent and we will be filing the motion.

Please call me if you have any questions,

Courtney

Courtney Murphy

Clausen Miller P.C.

One Chase Manhattan Plaza
39th Floor
New York, New York 10005
Phone: 212/805-3908
Fax: 212/805-3939
Mobile: 917/589-9436
cmurphy@clausen.com

This e-mail is intended only for the individual(s) or entity(s) named within the message. This e-mail might contain legally privileged and confidential information. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited by the sender and to do so might constitute a violation of the Electronic Communications Privacy Act, 18 U.S.C. section 2510-2521. If this communication was received in error we apologize for the intrusion. Please notify us by reply e-mail and delete the original message without reading same. Nothing in this e-mail message shall, in and of itself, create an attorney-client relationship with the sender.